

TITLE 205
CHAPTER 4

REGULATIONS FOR CERTIFICATION OF A DEVELOPMENTAL DISABILITIES SERVICE PROVIDER

001 RATIONALE. These regulations are issued to provide the framework within which a developmental disabilities service provider in Nebraska shall define its operation. They reflect the service principles identified in the Developmental Disabilities Services Act. Compliance with the conditions of these regulations is an indication of the provider's capacity to provide services of quality to persons with developmental disabilities.

002 APPLICABILITY. Providers of specialized developmental disability supports and services must be certified by the Developmental Disabilities Division of the Department of Public Institutions. Once certified, a provider shall be eligible to receive Department administered funds.

002.01 The Director may deem a provider who holds current, applicable accreditation, licensing, or certification by an authority of competent jurisdiction to be in compliance with applicable Regulations of 205 NAC 4-004 through 020. For this consideration the provider must:

002.01a Submit a copy of the official survey reports and any associated plans of correction to the Division;

002.01b Submit a copy of the provider's service descriptions consistent with 205 NAC 4-016, 017, 018, 019, and 020 as applicable; and

002.01c Demonstrate compliance with 205 NAC 3 and 5 as applicable.

003 PROCEDURES TO CERTIFY A DEVELOPMENTAL DISABILITIES SERVICE PROVIDER

003.01 An agency, organization or individual that is not currently certified by the Department may apply for a Provisional Certification.

003.01A Prerequisites for Provisional Certification are:

003.01A1 Formal application on forms provided by the Division;

003.01A2 A current copy of the policies and procedures for the agency, organization or individual;

003.01A3 A current copy of the service description for each service delivered; and

003.01A4 A current copy of other applicable required licenses issued by authorities of competent jurisdiction which apply to the agency, organization or individual seeking certification.

003.01B Upon Division approval of the policies, procedures and service descriptions, a Provisional Certification may be issued by the Division.

003.01B1 The Division will schedule a site visit within six (6) months of the provision of services to verify that the approved policies and procedures are being followed and that the approved service descriptions are being implemented.

003.02 The Division shall within thirty (30) calendar days after the date of the site visit send the certification review report to the provider by certified mail. If there are no areas of noncompliance cited in the certification review report, a two-year certification status will be issued. If areas of noncompliance are specified in the certification review report, a final certification status will not be issued until a plan of correction is accepted by the Division.

003.02A Documentation/information that is not available for Division review at the time of the site visit shall be reported as deficiencies in the certification review report. The provider may submit at the appropriate time, such documentation/information with the Plan of Correction.

003.03 As appropriate, the provider shall submit to the Division within forty (40) calendar days of the receipt of the certification review report a plan of correction to address each cited area of non-compliance which must include:

003.03A Procedures for correction of cited non-compliance; and

003.03B The timeline by which the regulations not in compliance will be brought into compliance.

003.04 The Division Director shall within fifteen (15) calendar days after the receipt of the provider's plan of correction notify the provider by certified mail of the final determination of the:

003.04A Acceptance of the plan of correction and the final determination of the provider's certification status; or the

003.04B Need for revision of the plan of correction; or the

003.04C Need for additional information.

003.05 A provider aggrieved by a decision to deny or revoke certification shall be entitled to an appeal. A provider's certification shall not be revoked until the provider has exhausted the appeal procedure pursuant to 207 NAC 1.

003.06 The Division shall disclose the provider's certification status in response to inquiries only after the provider has been informed of the certification decision.

003.06A Upon request, persons receiving services, their families, and the designated protection and advocacy system shall be provided with copies of all reports resulting from surveys of providers conducted as part of the certification process.

003.07 Provider certification is contingent upon compliance with the certification standards as required by the Division. Agencies, organizations or individuals seeking provider certification can receive either a TWO-YEAR PROVIDER CERTIFICATION or a ONE-YEAR PROVIDER CERTIFICATION depending on the outcomes of the certification review process.

003.07A Two-year provider certification may be granted when an agency, organization or individual is in compliance with each of the certification criteria and shows fulfillment of the service standards. The provider's programs and practices are designed and implemented to benefit the persons receiving services. The reviewer's observations of the program, the personnel and documentation represent an established pattern and indicate that these conditions are likely to prevail/or improve.

003.07A1 Two-year provider certification may also be granted when an agency, organization or individual has deficiencies in relation to the standards, but has documented

substantial improvement in the plan of correction and demonstrates the ability and commitment to correct the remaining deficiencies without delay. The provider's programs and practices are designed and implemented to benefit the persons receiving services. The program, personnel and documentation indicate that the deficiencies noted do not represent an established pattern and that these conditions are likely to be rectified as stated in the plan of correction.

003.07A2 Certification is in effect for two (2) years from the date it is granted unless extended or revoked by the Division.

003.07B One-year provider certification is obtained when there are deficiencies in relation to the standards, but there is evidence in the plan of correction of the agency, organization or individual's ability and commitment to correct the deficiencies that exist; the services provided are benefiting persons receiving services and there is ongoing habilitation being provided; and there is evidence that the provider is protecting the health, welfare, rights, and safety of the persons receiving services.

003.07B1 Certification is in effect for one (1) year from the date it is granted unless extended or revoked by the Division.

003.07C No provider certification is obtained when an agency, organization or individual has deficiencies in several areas of the standards and there are serious questions as to the health, safety, welfare, rights and habilitation of the persons receiving services; or the agency, organization or individual has failed over time to comply with the standards.

004 **GOVERNING BOARD.** Specialized service providers shall have a governing board that shall:

004.01 Organize and supervise the delivery of specialized services within its governance;

004.02 Cause such services to be provided;

004.03 Ensure compliance with the certification and accreditation requirement of Neb. Rev. Stat. § 83-1217 and all applicable rules and regulations of the Department;

004.04 Support quality improvement efforts, review quality evaluation information, provide feedback to program staff regarding quality improvement activities, and cooperate fully with Quality Review Teams;

004.05 Define staff responsibilities in writing;

004.06 Oversee the performance of staff;

004.07 Maintain a current list of board members;

004.08 Maintain the minutes of each meeting;

004.08A Summaries of the minutes shall be distributed to participants upon request.

004.08B Copies of the minutes shall be made available to staff, persons receiving services, and the representatives of persons receiving services upon request.

004.08C Copies of the minutes shall be made available for inspection by the Division upon request.

004.09 Develop and maintain a Policies and Procedures Manual that describes the provider's operations. The policies and procedures must include:

004.09A A description of the method for verifying that policies and procedures required by 205 NAC are reviewed by the governing board or their designee prior to implementation and updated as necessary and available to persons receiving services, legal representatives and/or parents, advocates, staff persons and the Division.

004.09B An organizational chart and a written description which identifies positions responsible for the agency's operation; and

004.09C A description of the process used to ensure direct and open communication with the Division.

004.10 Have a membership or appoint a developmental disabilities advisory committee, which consists of:

004.10A Persons with developmental disabilities or family members of persons with developmental disabilities;

004.10B County commissioners or other locally elected officials; and

004.10C Persons who are not elected officials, persons with developmental disabilities, or family members of persons with developmental disabilities. In addition:

004.10D At least one-third of the membership is persons with developmental disabilities or family members of persons with developmental disabilities;

004.10E No more than one-third is county commissioners or other locally elected officials; and

004.10F No more than one-third is persons who neither have developmental disabilities nor have a family member with developmental disabilities or are elected officials.

004.11 Governing Boards that appoint a developmental disabilities advisory committee shall:

004.11A Define the advisory committee's functions and operation in writing;

004.11B Maintain a current list of advisory committee members; and

004.11C Maintain the minutes of each advisory committee meeting.

004.11C1 Upon request, copies of the minutes shall be given to persons receiving services, the representatives of persons receiving services, staff persons and the Division .

005 PERSONNEL POLICIES. The provider shall have personnel policies and procedures to aid in providing fair treatment of applicants, employees and volunteers in their selection, compensation, evaluation, advancement training and discharge. The policies and procedures must:

005.01 Include a statement on nondiscrimination on the basis of race, color, religion, sex, disability, marital status, national origin or age.

005.02 Specify that there will be job descriptions for all positions that set forth minimum education and experience requirements; licensure, if required; positions supervised; and duties.

005.02A There will be salary ranges for each job description but the salary ranges need not be included in the job descriptions.

005.03 Include a compensation plan for all employees which ensures a full range of work-site enhancements to attract and retain qualified staff persons. The plan shall include a description of benefits such as leaves, insurance and retirement.

005.04 Describe the methods to increase retention of quality employees and decrease staff turnover.

005.05 Include a mechanism for describing and documenting the supervision of all personnel including volunteers and students.

005.06 Include the format for an annual written performance evaluation that is reviewed with the employee.

005.07 Describe the processes for issuing exemplary and disciplinary actions, including merit, suspension and/or dismissal of an employee.

005.08 Include a grievance procedure that ensures due process.

005.09 Include information provided to all employees regarding resignations and layoffs; employment status, e.g., probationary period; overtime eligibility; methods of compensation; personnel record maintenance, accessibility to and release of information from personnel records.

006 STAFF TRAINING AND CONTINUING EDUCATION. The provider shall develop and implement a written plan for staff training and continuing education, maintaining and improving staff knowledge and skills to meet the goals of the agency and reflect the service principles of the Developmental Disabilities Services Act which shall include:

006.01 A description of the process for identifying staff training needs, which includes employee input.

006.02 A description of the training to be provided to persons employed within specific job classifications and the timelines within which the training will be provided to ensure staff are trained to provide the necessary level of care prior to assuming the duty. Training topics may include but are not limited to:

006.02A Orientation to acquaint them with the philosophy, organization, services, practices and goals of the agency and training in individual rights, abuse and neglect, individual program planning including individualized assessments, baselining, data collection, writing formal habilitation programs, selecting training materials, and reinforcement types and schedules, medication administration, basic first aid, cardiopulmonary resuscitation, respite care, and recordkeeping.

006.03 A timeline for updating and revising the staff training plan.

006.04 A documented procedure for completion, storage, and retention of information in employee training records which must specify:

006.04A A uniform records format;

006.04B A method for measuring and documenting the competency of trained staff;

006.04C A method for documenting staff proficiency in competency-based training;

006.04D That record entries will be legible, dated and signed and include the job title of the person making the entry; and

006.04E A method to maintain confidentiality of the training records.

006.05 A procedure to give employees opportunities to participate in training programs designed to facilitate an increase in personal effectiveness, as well as lateral and upward employment opportunities.

006.07 A procedure for providing all supervisory employees or supervisory candidates management training opportunities.

007 COMPLAINT MECHANISM. The provider shall have policies and procedures governing a complaint mechanism for the person(s) receiving services, the family, the legal representative, and other team members.

007.01 The policies and procedures must allow for due process and identify matters that may be addressed via the complaint mechanism.

007.02 These procedures shall provide an opportunity for the resolution of disputes at the level closest to the issue(s). Utilization of the provider complaint mechanism is voluntary and in no way denies or delays a person's right to access an informal resolution process or an appeal and a hearing at the state level.

007.03 The filing of a complaint shall operate to stay the decision or action which is the subject matter of complaint and the person with developmental disabilities shall remain in his or her current placement unless:

007.03A The current placement is a temporary placement of a duration not to exceed forty-five (45) days and made pursuant to a medical or other emergency and said emergency ceases to exist.

007.03B A medical or other emergency arises necessitating a change in service or placement.

007.03C The health or safety of the person with developmental disabilities would be endangered by the continued placement.

007.03D The health or safety of other persons would be endangered by the continued placement.

007.04 All disputes involving the application of, and exclusion from, the stay pending a decision on the complaint, and the continuation of, or cessation of, current placements of the person with disabilities pending the decision on the complaint will be resolved by:

007.04A Agreement of all of the parties.

007.05 A copy of the complaint mechanism policies and procedures shall be provided to each person receiving services, the family, and the legal representative at the time the person enters services.

007.06 The provider shall review the complaint mechanism with each person receiving services, the family, and the legal representative at the time the person enters service and annually thereafter.

007.06A The annual review of this complaint mechanism shall be documented in the IPP.

007.07 No waiver of 205 NAC 4-007 or its parts shall be granted.

008 **COMMUNITY EDUCATION AND INFORMATION.** The provider shall develop and implement a written community education and information plan that is designed to facilitate the social integration and acceptance of persons served by their agency.

008.01 The provider shall have policies and procedures governing community education and information which must include:

008.01A Establishing a locus of responsibility for community education and information activities;

008.01B A description of the methods employed to implement the community education plan. Such methods may include newsletters, fact sheets describing services, brochures, open houses, and audiovisual materials;

008.01C A description of the methods employed to provide protection of each person's privacy when persons receiving services are included in community education and information presentations which must include the written consent of that person and the legal representative and/or the parent(s) (if the person is a minor);

008.01D A description of methods and activities for encouraging community interaction with persons receiving services;

008.01E A description of how often community education and information events must occur. At a minimum, these events must occur semi-annually; and

008.01F A description of methods used in disseminating information to the public regarding upcoming events.

008.02 The provider shall maintain records of all community education and information activities and monitor the implementation of the plan.

009 **QUALITY IMPROVEMENT.** The provider shall deliver services of the highest possible quality as documented by a system of quality improvement, developed and implemented by the provider, that monitors the quality of ongoing activities as well as outcomes following the delivery of services. The system must demonstrate involvement of the governing board, advisory committee, staff at all levels, persons receiving services, families and advocates in quality improvement processes.

009.01 The provider shall designate an individual or individuals whose qualifications and duties are defined in writing, to develop, implement and monitor a system of quality improvement.

009.02 The provider shall have a written plan which describes the system of quality improvement. The plan must specify:

009.02A Goals of the quality improvement system;

009.02B Methods for evaluating the services being delivered as well as for reviewing service records;

009.02C Methods for evaluating programmatic and administrative processes that affect habilitation. Such methods may include: systems review, peer review, individual records audit, and observations of habilitative services to ensure needs are being met appropriately;

009.02D Methods and procedures for the involvement of the governing board, advisory committee, staff at all levels, persons receiving supports and/or services, families, and advocates in the process.

009.02E Methods and timelines by which provider quality improvement activities are developed, organized and implemented;

009.02F Methods to provide feedback to staff, persons receiving services, families, legal representatives, advocates, the governing board and the advisory committee on the results of the reviews and the effectiveness of actions taken; and

009.02G Procedures for evaluating the effectiveness of the quality improvement system which shall include documentation of progress noted and/or service processes which have been improved along with a plan of action for providing technical assistance to aid in making improvements, if improvements have not been noted.

009.03 The provider shall maintain documentation of all quality improvement activities.

009.03A Findings, recommendations, actions taken and follow-up measures must be documented and provided, upon request, to the Division, the staff, persons receiving services, families, legal representatives, advocates, the governing board, the advisory committee, and the quality review team.

009.03B Specific information produced from quality reviews must be made available to management staff in a timely fashion.

009.04 The provider shall annually review and revise as needed the quality improvement plan.

010 RECORDS OF PERSONS RECEIVING SERVICES. The provider shall maintain records specific to the person receiving services to facilitate the planning, management, and evaluation of services essential for the development and implementation of effective IPPs/IFSPs.

010.01 The provider shall have policies and procedures for the completion, storage, retention and timely dissemination of information in the records. These policies and procedures must specify:

010.01A A uniform records format;

010.01B The time frame for completion of all documents which includes, but is not limited to: assessments, habilitation program reviews, incident reports and reports to Protective Services as applicable;

010.01C The timeframe for routing all documents to the appropriate person;

010.01D The method and frequency for obtaining authorization for medical treatment;

010.01E That all record entries are in ink, legible, dated and documented by the full signature and job title of the person making the entry.

010.01E1 Initialed entries will be accepted as long as the full signature, title and the initials of the person making the record entry are located on a page in a legend.

010.02 Each record must contain information that includes:

010.02A A current photo of the person receiving services;

010.02B The name and telephone number of the person's physician;

010.02C Relevant medical information such as medical condition, diagnosis, current medications, allergies; and

010.02D The name and telephone number of the persons to be notified, including the legal representative (if applicable), in the event of an emergency.

010.03 The current and applicable records for the person served shall be located at the site of service delivery unless prohibited by workplace rules or practices.

010.04 A designated staff person shall be responsible for the records of persons served and for the implementation of policies and procedures pertaining to records of persons served.

010.05 The provider shall have policies and procedures addressing the process by which the person receiving services or the legal representative, and other team members may obtain a copy of information in the file or review information in the file.

011 **CONFIDENTIALITY.** The provider shall maintain confidentiality of information that pertains to the identity, diagnosis, or habilitation of any person receiving services.

011.01 Information can be disclosed only with the written informed consent of the person or his/her legal representative, pursuant to a court order, or in a review by a state or federal agency for purposes of certification, accreditation, audit, monitoring, or interagency cooperative agreements.

011.02 The provider shall have policies and procedures to govern confidentiality which must include:

011.02A Procedures and forms for releasing to and requesting information from other agencies. The form must:

011.02A1 Specify the name of the person or agency to whom the information is released;

011.02A2 Describe the information released;

011.02A3 Specify the purpose for the release of information;

011.02A4 Specify the length of time for which the release is valid, not to exceed one year; and

011.02A5 Provide space for the date and signature of the person receiving services and/or his/her legal representative.

011.02B Procedures for protecting confidentiality when records are to be stored or destroyed;

011.02C Procedures for protecting confidentiality to be followed by staff when participating in team meetings/consultations; and

011.02D Procedures for securing informed consent from the person receiving services and/or the person's legal representative to release information.

011.02 No waiver of 205 NAC 4-011 or its parts shall be granted.

012 RIGHTS OF PERSONS RECEIVING SERVICES. The provider shall protect the rights of persons receiving services.

012.01 Each individual with developmental disabilities is considered to be capable of exercising his/her rights as allowed by law on his/her own or through a legal representative.

012.02 Provider policy and procedure shall specify that persons receiving services who perform functions as staff or similar to staff shall receive remuneration as staff in accordance with the Federal Wage and Hour Laws.

012.03 The provider shall implement policies and procedures and institute practices that afford persons receiving services the right to:

012.03A Receive services without regard to race, color, religion, disability, sex, marital status, national origin or age;

012.03B Privacy;

012.03C Own and access personal possessions, including personal funds;

012.03D Communicate freely by sealed mail, telephone, or other forms of communication devices;

012.03E Be protected from exploitation when engaged in training and productive work, in accordance with state and federal wage and hour labor laws;

012.03F Access legal counsel and representation;

012.03G Be free from neglect, abuse, and harassment (physical, verbal, psychological or sexual);

012.03G1 The provider shall ensure that all staff with direct contact with persons served have not been involved in adult or child abuse, neglect and/or harassment by checking the Department of Health and Human Services Central Registries for any reports relevant to the direct contact staff person.

012.03G1a Any staff with a registry report of substantiated adult or child abuse/neglect, as defined by Protective Services (APS/CPS), shall not provide direct contact services.

012.03G2 The provider shall require a state and federal criminal history record information check completed by the Nebraska State Patrol and the Identification Division of the Federal Bureau of Investigation for all employees hired on or after September 13, 1997, who work directly with persons receiving services and who are not licensed or certified as members of their profession.

012.03G3 Each new employee subject to the criminal history check, shall file two complete sets of his or her legible fingerprints and biographical information with the Nebraska State Patrol.

012.03G4 The provider shall determine that employees with a criminal history present no risk of abuse, neglect, exploitation, or sexual misconduct to individuals served.

012.03G5 The provider shall retain the results of each new employee's Central Registry and criminal history checks for one year following the termination of the employee's employment.

012.03G6 Results and documentation of criminal history record checks completed not more than 180 days prior to hire date may be accepted by the provider as compliance with 205 NAC4-012.03G2 and 4-012.03G3.

012.03J Receive appropriate medical treatment in a timely manner;

012.03K Receive an appropriate and nutritious diet;

012.03L Be treated with dignity and respect;

012.03M Develop and maintain personal relationships, choose friends and select living companions.

012.03N Move about freely both on and off the premises of his/her residence;

012.03O Receive services and assistance which present opportunities to increase independence, interdependence, productivity, and integration into the community;

012.03P Learn appropriate skills and behaviors;

012.03Q Participate in all decision-making processes which affect them;

012.03R Live, work and recreate with people who do not have disabilities whenever possible;

012.03S Receive services provided in the least restrictive settings;

012.03T Receive age and environment appropriate services;

012.03U Receive services in safe and sanitary settings;

012.03V Exercise the same civil rights as other citizens;

012.03W Receive due process in the handling of complaints or the modification or denial of rights;

012.03X Receive reasonable accommodation as required by the Americans with Disabilities Act, including Title II; and

012.03Y Receive sixty (60) days written notice of service termination.

012.03Y1 With the termination notice , the provider must send information outlining the rationale for the action and the Complaint Mechanism.

012.04 No waiver of 205 NAC 4-012 or its parts shall be granted.

013 ABUSE AND NEGLECT: The provider shall develop and implement a process for preventing abuse and neglect and handling allegations of abuse and neglect of persons receiving services.

013.01 The provider shall have policies and procedures for handling all allegations of neglect or abuse of persons who receive services. The policies and procedures must:

013.01A Define neglect and abuse consistent with Nebraska law;

013.01B Describe the mechanism for reporting instances of suspected neglect or abuse consistent with Nebraska law;

013.01C Describe the mechanism for reviewing all allegations of neglect or abuse and documenting findings and actions taken;

013.01D Describe the process for disciplinary action taken when staff have been found to have engaged in neglectful or abusive behavior;

013.01E Describe the means by which due process is provided to the individual served; and

013.01F Specify that the provider will inform the Service Coordinator, and the legal representative of the allegation within twenty-four (24) hours of the provider becoming aware of the allegation.

013.02 Providers shall not interfere with outside investigations.

013.03 All allegations of abuse and neglect shall be reviewed by a committee.

013.03A The committee shall be composed of persons free from conflict of interest and shall include at least one person who has a developmental disability or is a relative of a person with a developmental disability;

013.04 The provider shall have policies and procedures to govern this committee's actions which must include:

013.04A A written description of the committee's authority and responsibilities;

013.04B A written description of the committee selection criteria, which includes the number of individuals on the committee, the length of term served on the committee, and the qualifications required to serve on the committee;

013.04C A documented training process by which the committee is made aware of their responsibilities;

013.04D A policy and process giving the committee full and free access to all information necessary to fulfill its obligations;

013.04E The committee meeting schedule and/or the circumstances which dictate that a committee meeting must be held;

013.04F A description of the process by which information from the committee is communicated to the provider;

013.04G The format used by the provider to indicate the provider's response to the committee's recommendations;

013.04H A policy and process giving the alleged victim, the legal representative, the parent(s) (if the person is a minor), and advocate as deemed appropriate by the person receiving services, notice of the Review Committee findings and recommendations within five (5) calendar days following submission of the committee report;

013.04I A policy and process giving the alleged victim, the legal representative, the parent(s) (if the person is a minor), and advocate as deemed appropriate by the person receiving services, notice of the provider's response to the committee recommendations within thirty (30) calendar days following submission of the report; and

013.04J A description of the process used to inform the service coordinator of the allegation(s) and outcome of the committee's review.

013.05 The provider shall maintain a current list of committee members and shall keep and maintain minutes of each meeting.

014 BEHAVIOR MANAGEMENT PROGRAMS. The provider will implement and monitor programs to teach behavior that is adaptive and appropriate for the purpose of enhancing the individual's development.

014.01 The provider shall have policies and procedures to govern the implementation of programs to manage problem behavior. These policies and procedures shall:

014.01A Be directed at maximizing the growth and development of the individual and incorporate methods that emphasize positive, proactive approaches.

014.01B Provide that the methods used should not be employed as punishment, for the convenience of staff, a substitute for habilitation, or reactive in design.

014.01C Include a definition of behavior management which specifies and defines approved intervention procedures, and a description of the mechanism for monitoring its use;

014.01D Specify emergency behavioral intervention procedures to be used to prevent persons served from causing harm to him/her self or others or causing considerable damage to the physical environment, when prior written consent for restrictive procedures has not been obtained;

014.01D1 If these emergency procedures are used three times or more within a six-month period, these procedures must be incorporated as part of a written behavior management program.

014.01E Prohibit corporal punishment, verbal abuse, physical abuse, psychological abuse, denial of a nutritionally adequate diet, seclusion, and a person receiving services disciplining another person served in the above manner;

014.01F Specify that restrictive procedures can only be used as an integral part of an individual behavior management program that is designed to lead to a less restrictive way of managing the behavior and ultimately to the elimination of the behavior for which the restrictive procedure is used.

014.01F1 Aversive stimuli to manage or change behavior shall not be used unless the IPP team, the behavior management committee, the human and legal rights committee, and a physician concur that to allow the persistent and intractable behavior would probably cause severe and/or irreversible harm to the person receiving services;

014.01G Specify that staff training must be specific to the procedures to be implemented in the individual's program plan and provided prior to implementation of the procedures;

014.01I Specify that for the following behaviors there must be a program or behavioral intervention procedure to meet the needs:

014.01I1 Behaviors that are obstacles to an individual's becoming more independent;

014.01I2 Behaviors that interfere with the person's ability to take part in habilitation or training;

014.01I3 Self-injurious behavior; and

014.01I4 Behaviors that are a threat to others, or are aggressive or destructive.

014.02 The provider shall establish a committee to provide initial approval and review and periodic review of programs and interventions which include restrictive procedures. The committee shall review the Behavior Management Program Plan in its entirety.

014.02A The provider shall have policies and procedures for this committee which must include:

014.02A1 A written description of the committee's responsibilities;

014.02A2 A written description of the committee selection criteria which includes the number of individuals on the committee, the length of the term served on the committee, and the qualifications required to serve on the committee; and

014.02A2a No more than half of the committee members may be staff of the agency providing service.

014.02A2b Committee members shall be free from conflict of interest.

014.02A3 A description of the process by which information and recommendations from the committee is communicated to interdisciplinary team members; and

014.02A4 The format used by the provider to indicate the provider's response to the committee's recommendations.

014.02B The provider shall maintain a current list of committee members and minutes of each meeting;

014.02C The provider shall provide and document training for committee members which includes but is not limited to:

014.02C1 Agency policies and procedures regarding the rights of persons receiving services, abuse and neglect, behavior management and committee responsibilities.

014.03 A behavior management program or behavior intervention strategy must:

014.03A Be based on an assessed need which includes identifying consequences, antecedents, frequency and intensity of the behavior;

014.03B Identify and address barriers in the individual's physical or social environment which may effect the behavior;

014.03C Identify actions taken by the staff as consequences of the behavior;

014.03D If restrictive, prior written consent of the person receiving services or the legal representative must be obtained, except in emergency situations; or a statement of provider action if the person is not competent and there is no legal representative; and

014.03E If restrictive, be approved by the interdisciplinary team, and by the committee prior to implementation;

014.04 A behavior management program shall identify and track the specific targeted behaviors to be increased, behaviors to be decreased and describe the staff interventions for these behaviors.

014.05 A behavior management program must specify:

014.05A The desired behavioral goal and objectives which teach circumstances under which the behavior can be exhibited adaptively and/or provisions to teach the individual how to replace or channel the behavior into similar but adaptive expression;

014.05B The method to be used;

014.05C The schedule;

014.05D Data to be collected;

014.05E Reinforcement schedule; and

014.05F Staff authorized to implement and monitor the program.

014.06 A behavior management program that uses restrictive procedures must document in the individual's record that less restrictive or intrusive methods have been systematically tried and have been demonstrated to be ineffective.

014.07 The provider shall have policies and procedures that govern the use of physical and/or mechanical restraints which must specify that:

014.07A Restraints are used only to protect a person from self-injury or prevent a person from injuring others;

014.07B The maximum length of time that restraints are in force shall not exceed the length of time established by an individual's interdisciplinary team but shall in no event exceed twelve (12) hours;

014.07C A person placed in restraints is checked at least every fifteen minutes by staff trained in the use of restraints with a record kept of such checks; and

014.07D Opportunities for exercise and access to a bathroom facility are provided for at least ten minutes during each two hours in which restraints are employed, and a record of such activities is kept.

014.08 The provider shall have policies and procedures governing the use of behavior modifying drugs. The policies and procedures must require:

014.08A Documented reports of staff observations to the physician regarding the behavior which the medication has been prescribed to reduce;

014.08B A physician's written order before administering the drug;

014.08C That informed consent for the use of the medication is obtained from the person or the legal representative.

014.08D A medication review procedure which documents the rationale for continued use of the medication;

014.08E Documentation of the name of the medication and the dosage to include:

014.08E1 The reason for the medication and the specific behavior to be affected by the medication;

014.08E2 That the use of the medication, side effects and contraindications of the medication are reviewed by the agency's review committee;

014.08E3 How often the medication is reviewed by a physician; and

014.08E4 The nature and frequency of medical testing required to identify potentially harmful side effects of or reactions to the medication.

14.09 The provider shall have policies and procedures governing time-out procedures providing that removal of a person from a situation

for time-out purposes occurs in accordance with the person's habilitation program plan. The policies and procedures must require:

014.09A A one hour maximum of time-out per incident;

014.09B Observations to be made and documented a minimum of every fifteen minutes; and

014.09C If a room used for time-out purposes has a lock mechanism, the lock is only used to confine an individual to the room when staff are present for constant observation or to keep persons out of rooms that are not in use and do not serve as an exit.

014.09C1 The room must have adequate lighting and ventilation and be free of environmental objects that can be adapted to induce bodily harm.

014.10 No waiver of 205 NAC 4-014 or its parts shall be granted.

015 SERVICES. The service provided is based on the needs and eligibility of the person, taking into account the person's preferences. Services may include but are not limited to the following categories: Residential, Day, Retirement, Respite, and Transportation.

015.01 The delivery of the specific service must be documented in the IPP or IFSP of the person served.

015.02 Services available through non-specialized agencies should not be duplicated by specialized providers.

015.03 Each provider shall have a written plan for each service delivered. The written plan for each service must include:

015.03A A description of how the service provided meets the definition of a service.

015.03B A rationale statement detailing the basis for the service, its goals and its objectives;

015.03C A description of how the service is organized;

015.03D A description of the eligibility criteria for accessing the service;

015.03E A description of how the person receiving services is transitioned into each service;

015.03F A description of the method for documenting the daily activities of each person while they are receiving the service;

015.03G A description of the criteria for:

015.03G1 Transitioning within a service;

015.03G2 From one service to another; and

015.03G3 For termination from a service;

015.03H A description of the process including timelines used in reviewing, revising and monitoring each service plan;

015.03I An explanation of the qualifications of staff persons;

015.03J A description of how the provider's services coordinate with educational services for children and adolescents; and

015.03K A description of how the provider's services coordinate with non-specialized aging services for senior citizens.

015.03L A description of the method for documenting that each person receiving a service, their legal representative and their family (as appropriate) receives an orientation to the service. The orientation must include but is not limited to:

015.03L1 A tour of any potential service area if applicable;

015.03L2 A review of rules;

015.03L3 A review of rights;

015.03L4 A review of typical daily activities; and

015.03L5 An introduction to staff persons and other persons receiving services in each environment.

015.04 Service plans must be reviewed at least annually.

015.05 For each setting at which a service is provided, there must be an annual health, safety, sanitation and disaster plan which ensures the health and safety of the persons receiving services. The plan must include:

015.05A Specific procedures for responding to medical emergencies and the unauthorized absence of persons receiving services;

015.05B Procedures for responding to natural disasters, including evacuation plans, training and regularly scheduled drills;

015.05C Specific procedures to ensure that equipment is properly installed, maintained and that persons operating the equipment are properly trained;

015.05D Procedures to prevent the spread of communicable diseases; and

015.05E Procedures to ensure sanitation of settings not licensed or regulated by other authorities of competent jurisdiction including:

015.05E1 Food preparation areas;

015.05E2 Eating areas; and

015.05E3 Restrooms.

015.06 The provider shall give at least sixty (60) calendar days written notice to the Division prior to the closing of a service setting.

015.06A The notice must include a plan that indicates the disposition of the persons receiving services in the setting.

016 **RESIDENTIAL SERVICES.** Residential services provide persons with the supports, services and interventions desired and needed to increase or maintain their capacity for independent functioning, self-determination, interdependence, productivity and community integration in the home environment.

016.01 The types and levels of interventions, formal training, supports, activities and supervision provided are based on the needs of the eligible person and determined by the interdisciplinary team process, taking into account the preferences of the individual.

016.02 Areas of service may include but are not limited to:

016.02A Personal care, such as eating, drinking, hygiene, self-administering medications, toileting and dressing skills;

016.02B Home management, such as house cleaning and meal preparation skills;

016.02C Communication, such as making choices, expressing needs, preferences, thoughts and receptive language skills;

016.02D Socialization, such as personal interaction skills;

016.02E Sensorimotor, such as ambulation, object manipulation and visual, auditory, tactile, gustatory and olfactory recognition skills;

016.02F Academic skills such as time, date, money and number concept skills;

016.02G Community access skills; and

016.02H Leisure time/recreational skills.

016.03 Residential service settings may include but are not limited to the:

016.03A Parental or own home;

016.03B Supervised living; and

016.03C Group homes or congregate settings;

016.04 If the residential service is provided in a setting that is owned, operated, leased and or rented by the provider, the following additional standards must be met:

016.04A Each person receiving services shall be provided with adequate personal space to ensure privacy and security of property;

016.04B Personal possessions and decorations selected by the persons shall be evident;

016.04C Adequate staffing shall be available to provide the supports and services identified in the IPP; and

016.04D Each setting shall have an individual responsible for the supervision of the services provided. This individual may also have administrative and management responsibilities.

017 DAY SERVICES. Day services provide persons with the supports, services and interventions desired and needed to increase or maintain their capacity for independent functioning, self-determination, interdependence, productivity and community integration in the Day Service environment.

017.01 The types and levels of interventions, formal training, supports, activities, and supervision provided are based on the needs of the eligible person and determined by the interdisciplinary team process, taking into account the preferences of the individual.

017.02 Areas of service may include but are not limited to:

017.02A Employment skills such as job seeking, related instruction, and occupational skill training;

017.02B Community access, such as utilizing public transportation, the bank, the public library, crossing the street while obeying pedestrian laws;

017.02C Motor skills, such as eye-hand coordination, visual processing;

017.02D Social skills such as displaying a cooperative attitude, respecting other people's feelings and property;

017.02E Personal health care/hygiene skills such as recognizing illness/injury, self-administering medications, providing simple first aid, demonstrating acceptable dress and hygiene, toileting, handwashing;

017.02F Cognitive skills, such as money/time concepts/management, reading/recognizing words;

017.02G Communication skills such as matching shapes and colors, making choices, following directions (simple to complex), asking for help when necessary; and

017.02H Leisure time/recreational skills.

017.03 Day service settings may include but are not limited to:

017.03A Businesses and industries in the community, including competitive employment;

017.03B Work stations;

017.03C Enclaves;

017.03D Sheltered Workshops;

017.03E Vocational Centers; and

017.03F Activity Centers.

017.04 An agency that provides training by means of contract work must have administrative policies and procedures that:

017.04A Provide the time study procedures to be used in determining the rate of reimbursement for persons in this service;

017.04B Define the method(s) used to ensure competitive bidding practices;

017.04C Require that production records are kept and that they include evidence of each person's production performance, earning rate and payment based on the recorded production level;

017.04D Require compliance with applicable federal wage and hour laws; and

017.04E Provide for the health and safety of persons receiving services. Methods may include, but are not limited to, the following:

017.04E1 Providing personal protective equipment;

017.04E2 Providing training in the handling and storage of materials;

017.04E3 Providing training specific to operations involving hazardous materials and processes, including safe and effective management of biohazardous materials;

017.04E4 Providing training in the proper use of hand-held and portable powered tools; and

017.04E5 Engineering the working environment.

018 RETIREMENT SERVICES. Retirement services provide the supports, services and interventions desired and needed to enable the older person with developmental disabilities, or those with verified medical conditions resulting in progressive dependence, to enjoy retirement as is individually possible.

018.01 The types of interventions, formal training, supports and activities provided are based on the needs of the eligible person and determined by the interdisciplinary team process, taking into account the preferences of the individual.

018.02 Programs and activities should be designed to stimulate the person receiving services; encourage and enable active participation; develop, maintain and increase awareness of time, place, weather, persons and things in the environment; introduce new leisure pursuits; establish new relationships; improve or maintain flexibility, mobility and strength; develop and maintain the senses; and to maintain and build on previously learned skills.

018.03 Areas of service may include but are not limited to:

018.03A Reality orientation and reminiscence;

018.03B Leisure skills/interests;

018.03C Community access skills (places of interest/leisure/public service/resources);

018.03D Personal care/safety;

018.03E Social skills;

018.03F Money management skills; and

018.03G Physical fitness.

018.04 Retirement service settings may include but are not limited to:

018.04A Community centers;

018.04B Activity centers;

018.04C Places of interest in the surrounding community;

018.04D The home of the eligible person; and

018.04E Group homes or congregate settings.

019 RESPITE SERVICES. Respite services are designed to sustain the family or other non-paid primary caregiver by providing those individuals with time-limited and temporary relief from the ongoing responsibilities of caregiving.

019.01 Respite services can be delivered by an approved provider that meets all general provider standards and all applicable federal, state and local laws and regulations.

019.02 Respite services are not available for the specialized provider.

019.03 The plan for the provision of respite services must be documented by the Service Coordinator in the IPP/IFSP of the person served.

019.03A The narrative must include the amount of respite time needed, as determined by the interdisciplinary team.

019.04 Respite services may be authorized when:

019.04A The non-paid caregiver needs relief for regular, pre-scheduled, personal activities (e.g., religious services, grocery shopping, or club meetings);

019.04B The non-paid caregiver requires periods of rest and relaxation;

019.04C The non-paid caregiver is taking a vacation;

019.04D The non-paid caregiver requires health services (e.g., dental care, doctor appointments, hospitalization) resulting in the temporary incapacitation of the caregiver; and/or

019.04E An emergency or crisis arises which requires the usual caregivers' absence or places an unusual amount of stress on the caregiver;

019.025 Specialized providers shall ensure that individuals providing respite care are age 19 or older.

019.06 Respite providers cannot be members of the person's immediate household.

019.07 Respite care may be provided in a variety of settings which include but are not limited to:

019.07A The natural family home,

019.07B The caregiver's home,

019.07C The respite caregiver's home and/or an agency facility.

019.08 If respite care is provided in a setting other than the home of the person receiving services, the provider must ensure that the:

019.08A Home/facility is architecturally designed to accommodate the needs of the individual;

019.08B Home/facility has an operable telephone available;

019.08C Emergency phone numbers are posted by the telephone;

019.08D Home/facility is:

019.08D1 Accessible to the individual;

019.08D2 Clean;

019.08D3 In good repair;

019.08D4 Free from fire hazards; and

019.08D5 Free of rodents and insects.

019.08E Home/facility is equipped to provide:

019.08E1 Comfortable temperature; and

019.08E2 Ventilation conditions.

019.08G The person receiving services shall not be exposed to hazards associated with, but not limited to, the following:

019.08G1 Furnace;

019.08G2 Water heater;

019.08G3 Any fire arms, or other weapons;

019.08G4 Medications; and/or

019.08G5 Poisons.

019.08H Household pets have all necessary vaccinations and do not pose a threat to persons in their environment.

020 TRANSPORTATION SERVICES. Transportation services are provided as determined by the interdisciplinary team and outlined in the IPP/IFSP. Transportation should directly contribute to the ability of the eligible person to remain in and access the community.

020.01 When transportation services are available, providers should require that each individual employed to transport persons:

020.01A Has knowledge of state and local traffic rules;

020.01B Is willing to and capable of assisting disabled individuals into and out of the vehicle and to and from parking places, when required;

020.01C Will ensure the individual's safety in transporting;

020.01D Has the appropriate valid vehicle operator's license; and

020.01E Has received training in:

020.01E1 First aid;

020.01E2 CPR; and

020.01E3 In meeting the needs of the specific individuals for whom transportation is provided.

020.02 The provider may not deny transportation services due to the lack of adaptation of vehicles. All vehicles used for transportation will be adapted to meet the needs of the individuals served.

Source: Neb. Rev. Stat. § 83-1202
Neb. Rev. Stat. § 83-1209
Neb. Rev. Stat. § 83-1210
Neb. Rev. Stat. § 83-1212 thru 83-1226